

other presentation of evidence. Motions for summary judgment may be filed only when a party believes that, based upon uncontested material facts, it is entitled to relief as a matter of law. The parties are to consider proceeding by submission of the case without a hearing in accordance with § 955.12, in lieu of a motion for summary judgment.

(1) Motions for summary judgment shall include a separate document titled *Statement of Uncontested Facts*, which shall contain in separately numbered paragraphs all of the material facts upon which the moving party bases its motion and as to which it contends there is no genuine issue. This statement shall include references to affidavits, declarations and/or documents relied upon to support such statement.

(2) The opposing party shall file with its opposition a separate document titled *Statement of Genuine Issues*. This document shall identify, by reference to specific paragraph numbers in the moving party's *Statement of Uncontested Facts*, those facts as to which the opposing party claims there is a genuine issue necessary to be litigated. An opposing party shall state the precise nature of its disagreement, and support its opposition with references to affidavits, declarations and/or documents that demonstrate the existence of a genuine dispute.

(3) The moving party and the non-moving party shall each submit a memorandum of law supporting or opposing summary judgment.

(4) If, despite reasonable efforts, the opposing party cannot present facts essential to justify its opposition, the Board may defer ruling on the motion to permit affidavits to be obtained or depositions to be taken or other discovery to be conducted, or may issue such other order as is just. The parties should not expect the Board to search the record for evidence in support of either party's position.

#### § 955.7 Pleadings.

(a) *Appellant*. Within 45 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each

of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed, and shall serve the respondent with a copy. This pleading shall fulfill the generally recognized requirements of a complaint although no particular form or formality is required. Should the complaint not be filed within the time required, appellant's claim and notice of appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to constitute the complaint and the respondent shall be so notified.

(b) *Respondent*. Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, the respondent shall prepare and file with the Board an answer thereto, setting forth simple, concise, and direct statements of the respondent's defenses to each claim asserted by the appellant, and shall serve the appellant with a copy. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. Should the answer not be filed within the time required, the Board may, in its discretion, enter a general denial on behalf of the respondent, and the appellant shall be so notified.

(c) *Affirmative claims by the respondent*. Where an appellant has appealed an affirmative claim by the respondent asserted in a final decision by a Postal Service contracting officer, such as a termination for default or a Postal Service claim that a contractor owes the Postal Service money under a contract, the Board may order the respondent to file the complaint as described in § 955.7(a), and the appellant to file the answer as described in § 955.7(b).

#### § 955.8 Amendments of pleadings or record.

(a) Upon its own initiative or upon application by a party, the Board may, in its discretion, order a party to submit a more definite statement of the complaint or answer, or to reply to an answer.

(b) When issues within the proper scope of an appeal, but not raised in

the pleadings, have been raised without objection or with permission of the Board at a hearing or in record submissions, they may be treated in all respects as if they had been raised in the pleadings. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, in its discretion the Board may admit the evidence and grant the objecting party a continuance or other relief if necessary to enable it to meet such evidence.

**§ 955.9 Hearing election.**

As directed by Board order, each party shall inform the Board, in writing, whether it desires a hearing as prescribed in §§ 955.18 through 955.25, or in the alternative submission of its case on the record without a hearing as prescribed in § 955.12. If a hearing is elected, the election should state where and when the electing party desires the hearing to be conducted and should explain the reasons for its choices.

**§ 955.10 Prehearing briefs.**

Based on an examination of the documentation described in § 955.5, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 955.9. In the absence of a Board requirement therefor, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall be furnished simultaneously to the other party.

**§ 955.11 Prehearing or presubmission conference.**

(a) Whether the case is to be submitted pursuant to § 955.12, or heard pursuant to §§ 955.18 through 955.25, the Board may upon its own initiative or upon the application of either party, convene a conference to consider:

(1) The simplification or clarification of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(3) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(4) The possibility of agreement disposing of all or any of the issues in dispute; and

(5) Such other matters as may aid in the disposition of the appeal.

(b) The results of the conference shall be reduced to writing by the Board and this writing shall thereafter constitute part of the record.

**§ 955.12 Submission without a hearing.**

Submission of the case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the record which will be settled pursuant to § 955.14. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs in accordance with § 955.24.

**§ 955.13 Optional Small Claims (Expedited) and Accelerated Procedures.**

(a) *The Small Claims (Expedited) Procedure.* (1) The Expedited Procedure is available solely at the election of the appellant. Such election requires decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure.

(2) The appellant may elect this procedure when:

(i) There is a monetary amount in dispute and that amount is \$50,000 or less, or

(ii) There is a monetary amount in dispute and that amount is \$150,000 or less and the appellant is a small business concern (as that term is defined in the Small Business Act and regulations promulgated under the Act).